SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JUL 10 1974
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

OCTOBER TERM, 1973

NO. 73-2004

ISAAC WASHINGTON, PASQUALE SOLE, PETER RINALDI,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEALS FOR THE STATE OF FLORIDA

JAMES J. HOGAN
COHEN AND HOGAN, P.A.
Attorneys for Washington
420 Lincoln Road
Miami Beach, Florida 33139
Telephone (305) 531-3403
MELVYN KESSLER
Attorney for Sole
1531 N.W. 15th Street Road
Miami, Florida 33125
Telephone (305) 856-1460
ARTHUR TIFFORD
Attorney for Rinaldi
1922 One Biscayne Tower
Miami, Florida 33131
Telephone (305) 371-1477

MIAMI REVIEW — 371-4053 — 377-3721

INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTION PRESENTED	2
CONSTITUTIONAL PROVISION	2
STATEMENT OF THE CASE	3-6
REASONS FOR GRANTING THE WRIT	7-12
CONCLUSION	13
CERTIFICATE OF SERVICE	14

TABLE OF CASES

	Page
Chaney v. State, 267 So.2d 65 (1972)	10
Hoffa v. United States, 385 U.S. 293, 17 L.Ed.2d. 374, 87 S.Ct. 408 (1965)	9
Kirby v. Illinois, 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed.2d. 411 (1972)	10-11
Massiah v. United States, 377 U.S. 201, 12 L.Ed.2d. 246, 84 S.Ct. 1199 (1964)	7, 8
Miranda v. Arizona, 384 U.S. 436 (1966)	11
United States v. Hayles, 471 F.2d. 788 (5th Cir. 1973)	8, 11

UNITED STATES CONSTITUTION

Fifth Amendment	3
Sixth Amendment	3, 7

in the
Supreme Court
of the
United States

OCTOBER TERM, 1973

NO. _____

ISAAC WASHINGTON, PASQUALE SOLE, PETER RINALDI,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEALS FOR THE STATE OF FLORIDA

Petitioners Issac Washington, Pasquale Sole and Peter Rinaldi pray that a Writ of Certiorari issue to review the judgment and opinion of the Third District Court of Appeals for the State of Florida entered in this proceeding on April 30, 1974.

OPINIONS BELOW

The opinion of the Third District Court of Appeals (unreported) appears in the appendix (Ap. A)

JURISDICTION

The judgment of the Third District Court of Appeals for the State of Florida was entered on April 30, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3). The decision of the Third District Court of Appeals on the issue presented in this petition constitutes a judgment rendered by the highest court of the State of Florida in which a decision could be had. As to the constitutional issues presented in this petition, no appeal could be taken to the Florida Supreme Court in that there were no conflicting District Court opinions either within one district or between any two of the several districts of Florida. The decision herein sought to be reviewed therefore constitutes a final judgment rendered by the highest Court of a State in which a decision could be had.

QUESTION PRESENTED

WHETHER A SURREPTITIOUS INTERROGATION BY UNDERCOVER POLICE OFFICERS CONDUCTED AFTER THE FORMAL COMMENCEMENT OF PROSECUTION AND ISSUANCE OF ARREST WARRANTS VIOLATES THE PROVISIONS OF THE FIFTH AND SIXTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

CONSTITUTIONAL PROVISION INVOLVED

Fifth Amendment: "No person . . . shall be compelled in any criminal case to be a witness against himself . . ."
Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense."

STATEMENT OF THE CASE

The petitioners were charged, tried and convicted in Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida as follows:

1. Each of the petitioners, along with other defendants not parties to this petition, were convicted of conspiracy to commit robbery and conspiracy to commit grand larceny.

2. The petitioner Sole was also convicted of carrying a concealed firearm and carrying a firearm during the commission of a felony.

3. The petitioner Rinaldi was also convicted of carrying a concealed weapon.

Subsequent to their conviction and sentencing, the Petitioners took a consolidated appeal to the Third District Court of Appeals. The constitutional issue presented in this petition was raised before that court.

The Third District Court of Appeals reversed the convictions and sentences for conspiracy to commit grand larceny as duplicitous, but affirmed the judgments and sentences in all other respects.

Each of the Petitioners now face lengthy prison terms as follows:

Isaac Washington	5 years
Pasquale Sole	11 years
Peter Rinaldi	6 years

The decision sought to be reviewed involves the admissibility of statements made by the petitioners during a surreptitious interrogation by undercover police officers, after the filing of a sworn information, the formal commencement of prosecution under Florida criminal procedure, and after the issuance of arrest warrants. The petitioners submit that the failure of the police officers to advise them that they were the subject of a criminal prosecution (that an information had been filed and warrants were outstanding) deprived them of their constitutional right against self-incrimination under the Fifth Amendment of the United States Constitution. In addition thereto, the Petitioners submit that the surreptitious interrogation by police officers deprived them of their right to counsel at a critical stage of the prosecution: post indictment (information) interrogation.

The facts giving rise to these constitutional issues, briefly summarized in the Third District Court's opinion, are as follows:

Undercover officers of the Dade County Public Safety Department allegedly uncovered a conspiracy to rob the safety deposit boxes at the Doral Beach Hotel. On Feb-

ruary 25th, 1973, two such officers met with the petitioners Washington, Sole and others but not Rinaldi. This meeting was recorded by means of a concealed device which transmitted the conversation to an outside receiver. The meeting ended with an agreement by those present to meet again the next night.

On February 26, 1973, but preceding the meeting, the undercover officers went to the State Attorney's Office and caused an information to be filed. The information charged the petitioner Washington, and three "John Does" one of whom was later determined to be Sole with conspiracy to commit robbery. Arrest warrants were issued and accepted by the police officers.

That evening, the undercover officers met with the petitioners. The ensuing conversation was taped in the same manner as the previous evening. The petitioners were unaware that the officers were policemen or that the conversation was recorded. At the conclusion of the meeting and prior to anyone leaving the meeting place, the officers arrested the petitioners.

Other pertinent facts not set forth in the District Court opinion include:

The Trial court originally suppressed the statements and tape recordings of February 26th, stating:

> "If they made a statement to a police officer after an information is filed, it will not be admitted unless they were warned of their rights under the Miranda, Massiah, and every other case I can think of." (F 107)

> "The only thing I am suppressing, for your benefit, are statements that may have been made without warning the defendants of their rights after criminal charges were filed against them. And I do not think any Appellate Court will reverse me on that." (R 200).

For reasons unknown, the trial court subsequently reversed its original order and denied the Defendants' motion to suppress (SR 65) (R 844-847).

The undercover officers themselves disclosed that the arrest warrants were in their possession but notwithstanding this they testified:

> "The purpose in attending the meeting was to further supply these people with the information that they had requested in gaining the information that we as police officers give in successfully arresting and prosecuting these individuals." (R 243)

The officers also testified that they had previously agreed to arrest the people who appeared at the meeting of the 26th for whom capias were outstanding (R 242) and to arrest the Petitioner Washington if anyone tried to leave the meeting.

As to the petitioner Rinaldi, since the meeting of February 26th was his first contact with any of the undercover agents, no information had been filed against him nor had a capias been issued. Nonetheless, the officers had agreed to arrest whoever showed up for the meeting.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER COURTS OF APPEALS AS TO THE BASIC CONSTITUTIONAL RIGHT TO ASSISTANCE OF COUNSEL AND RIGHT AGAINST SELF-INCRIMINATION UNDER THE SIXTH AND FIFTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

The Sixth Amendment guarantees that a criminal defendant shall enpoy the right "to have assistance of counsel for his defense."

The petitioners submit that a deliberate, planned surreptitious interrogation after the filing of an information and issuance of arrest warrants effectively deprived them of their right to counsel at a critical stage of the prosecution. Unquestionably, the filing of a sworn information and the issuance of arrest warrants constitutes the commencement of criminal adversary proceedings.

In *Massiah v. United States*, 377 U.S. 201, 12 L.Ed.2d 246, 84 S.Ct. 1199 (1964), this court held that the deliberate, surreptitious elicitation of incriminating statements from a defendant by a government agent after he has been indicted, retained an attorney, and has been arraigned violates the Sixth Amendment right to counsel.

In the case below, an information, the equivalent of an indictment under Florida Criminal procedure had been filed against two of the petitioners. Although in possession of arrest warrants, the officers, armed with a concealed

transmitter, held a subsequent one hour meeting with the petitioners to elicit evidence from them regarding the crime with which they had already been charged. The petitioners were not advised that an information had been filed; were not advised of their right to counsel, and were not advised of their rights against self-incrimination under the Fifth Amendment.

Applying *Massiah*, *supra*, to a similar situation, the Fifth Circuit in *United States v. Hayles*, 471 F.2d 788 (1973), stated:

> "Massiah teaches that although the government may properly continue to gather evidence against a defendant after he has been indicted, it may not nullify the protection *Miranda* affords a defendant by using trickery to extract incriminating statements from him that otherwise could not be obtained without first giving him the required warnings."

It is submitted that the deliberate failure of the police to advise the Petitioners that an information had been filed and their deliberate failure to make an immediate arrest constitutes precisely such trickery. Needless to say, if the petitioners had been advised that an information had been filed, that they were under arrest, or that they had the right to counsel, no lengthly statements would have been made. The motive of the police in concealing these facts is made obvious by the presence of the concealed transmitter at the post-information meeting. If the police only intended to execute the warrants why did they go to such great care in planning the recordation of the meeting. If the police only intended to execute the

warrants why then did they not do so immediately instead of drawing from the petitioners the conversations uttered during the hour-long meeting.

The District Court of Appeals rejected the applicability of *Massiah*, stating:

> "We hold that the holding in Massiah is not applicable to the recording of a meeting held before arrest where, as here, the meeting had already been arranged prior to the filing of an information."

Petitioners urge that the District Court erroneously concluded that the *arrest* constitutes the commencement of the criminal adversary proceeding for purposes of right to counsel and right to silence warnings. Ordinarily, such is the case where the police are making an on-the-scene "probable cause" arrest. Where, however, the State Attorney files an information and warrants are issued thereon, the adversary proceeding (prosecution) commences and the arrest is only a subsequent step therein.

In its brief before the Third District Court of Appeals the State of Florida argued that this Court's ruling in *Hoffa v. United States*, 385 U.S. 293, 17 L.Ed.2d 374, 87 S.Ct. 408 (1965), applied and that petitioners had no constitutional right to be arrested. Petitioners submit that the State of Florida, the trial court, and the Third District Court of Appeals have misinterpreted *Hoffa*. In it this Court stated:

> "There is no constitutional right to be arrested. The police are not required to guess at their peril

> the precise moment at which they have probable cause to arrest a suspect, risking a violation of the Fourth Amendment, if they act too soon and a violation of the Sixth Amendment if they wait too long. . . ."

Accordingly, where a probable cause determination has been made, as evidenced by the filing of an information and issuance of warrants, then, at that point, the right to counsel and its attendant warnings attaches. Likewise, the right to *Miranda* warnings also attach.

With respect to the initiation of the criminal adversary proceeding, the Supreme Court of Florida in *Chaney v. State*, 267 So.2d 65 (1972), adopted the reasoning of *Kirby v. Illinois*, 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed.2d 411 (1972), thusly:

> "The initiation of judicial criminal proceedings is far from a mere formality. It is the starting point of our whole system of adversary criminal justice. For it is only then that the Government has committed itself to prosecute, and only then that the adverse positions of Government and defendant have solidified. It is then that a defendant finds himself faced with the prosecutorial forces of organized society, and immersed in the procedural criminal law. *It is this point, therefore, that marks the commencement of the 'criminal prosecutions' to which alone the explicit guarantees of the Sixth Amendment are applicable.* See *Powell v. Alabama*, 287 U.S. 45, 66-71, 53 S.Ct. 55, 63, 77 L.Ed. 158; *Massiah*

v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed. 2d 1265, (Douglas, J., concurring)."

The judicial proceedings having commenced, the petitioners had a constitutional right to be apprised of the nature of the charges against them, their right to counsel and rights under the Fifth Amendment.

Petitioner Rinaldi submits that although no information had been filed against him and no warrant issued the investigation had sufficiently "focused" on him to the point that he should have been advised of his rights under the Fifth and Sixth Amendments. *Hayles, supra*, recognized the principle that at the point an individual undisputedly becomes the focus of an investigation the Government is therefore precluded by the Fifth Amendment from surreptitiously extracting incriminating statements.

It is submitted that with respect to Rinaldi, *United States v. Hayles*, and *Miranda v. Arizona*, both *supra*, are dispositive and reversal is warranted, especially since there is no evidence to support his conviction of conspiracy other than what was uttered on February 26, 1973.

The exclusion of the statements elicited on February 26, 1973, from the petitioners Washington and Sole would deprive the State of the sole evidence of any agreement to commit robbery, an essential element of the crime of conspiracy. So critical was the taped conversation of the 26th to the State's case that when the prosecution heard the court's first order suppressing the statements of February 26th they filed Notice of Appeal (R 199). This prompted the trial court to properly summarize the issue thusly:

> "Let me say this, if you did not have a case to file an Information before this case got started, and now, because the court says that a man must be warned of his rights after he is charged by a criminal indictment or information, and I have denied all their motions to suppress and everything, during the course of the conspiracy and because of some statement that was made without warning one of the defendants of his rights . . . if you want to delay this whole case, that is up to you, but it would not be admissable against any of the other defendants anyway." (R 202).

The petitioners submit that the right to counsel attaches when the investigation focuses, an information is filed, and warrants are issued, not when police officers in possession of arrest warrants issued on formal charges exercise their discretion and finally decide to effect an arrest.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Third District Court of Appeal for the State of Florida.

JAMES J. HOGAN
COHEN AND HOGAN, P.A.
Attorneys for Washington
420 Lincoln Road
Miami Beach, Florida

MELVYN KESSLER
Attorney for Sole
1531 N.W. 15th Street Road
Miami, Florida

ARTHUR TIFFORD
Attorney for Rinaldi
1922 One Biscayne Towers
Miami, Florida 33131

By James J. Hogan

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this ____ day of July, 1974, to the office of the Attorney General, 1350 N.W. 12th Avenue, Miami, Florida.

James J. Hogan

APPENDIX

APPENDIX

APPENDIX

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING PETITION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1974

CASE NO. 73-622

WILLIAM SCALDEFERRI,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

CASE NO. 73-621

PHILLIP POMPEO,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

App. 2

CASE NO. 73-643

PETER RINALDI,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

CASE NO. 73-644

PASQUALE SOLE,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

CASE NO. 73-805

ISAAC WASHINGTON,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

Opinion filed April 30, 1974.

Appeals from the Circuit Court for Dade County, Arthur E. Huttoe, Judge.

Milton E. Grusmark; Cohen & Hogan; Melvyn Kessler; Cagney & Tifford; Harvey S. Swickle, for appellants.

Robert L. Shevin, Attorney General, and Linda C. Hertz, Assistant Attorney General, for appellee.

Before PEARSON, CARROLL and HENDRY, JJ.

PER CURIAM.

The appellants are: Isaac Washington, Pasquale Sole, Peter Rinaldi, Phillip Pompeo and William Scaldeferri. They were tried together and each was convicted of (1) conspiracy to commit robbery and (2) conspiracy to commit grand larceny. In addition, Sole was found guilty of carrying a concealed weapon during the commission of a felony and Rinaldi was found guilty of carrying a concealed weapon. Each has appealed his judgment and sentence and the five appeals are the subject of this decision.

The evidence shows that two men from the Dade County Public Safety Department, acting in the capacity of undercover agents on Miami Beach, reported that a conspiracy to rob the safety deposit boxes of the Doral Beach Hotel was underway. On February 25, 1973, the two undercover agents met with defendants Washington, Sole, Pompeo, and Scaldeferri. One of the agents was equipped with a concealed device which transmitted the

conversation to an outside receiver. The overhead conversation was taped by other officers conducting a concurrent surveillance. The meeting ended around 10:00 p.m., with an agreement to meet the following evening.

On February 26, 1973 (preceding the planned meeting), an information was filed by the State Attorney, naming defendant Washington, and describing three "John Does," who were later determined to be defendants Sole, Pompeo and Scaldeferri. The trial judge determined that such information had been filed at approximately 4:10 p.m. Capias warrants were thereupon issued for the four defendants and accepted by a police sergeant.

That same evening, the two undercover agents kept their prearranged appointment at defendant Washington's motel room. Only defendants Washington, Sole and Rinaldi were present. The ensuing conversation was taped in the same manner as the previous evening, the defendants being unaware that the agents were policemen or that the conversation was taped. At approximately 11:00 p.m., the meeting ended and defendants Sole and Rinaldi exited the motel room. Washington was arrested immediately. Sole and Rinaldi were arrested after they had exited the motel room. Defendants Pompeo and Scaldeferri were arrested the following morning.

The appellants have filed a consolidated brief containing seven points. Not all of the points are applicable to all the appellants. With one exception, the points will be examined in the order presented by the appellants' brief.

The first point urges that the trial court erred in admitting into evidence testimony and tape recordings of conversations of the defendants with the undercover police officers which occurred subsequent to the filing of the information. This point is applicable to Washington, Sole, Pompeo, and Scaldeferri.

As to the appellant Washington, this point does not present reversible error because the alleged error would be, if error, harmless. There was clear and convincing evidence elicited from the police officers that Washington was planning a robbery of the safety deposit boxes. He was the instigator and he proceeded to set up the subsequent meetings which were facts whether or not the taped conversations were admitted into evidence. Cf. State v. Wadsworth, Fla. 1968, 210 So.2d 4; United States v. Hayles, 471 F.2d 788 (5th Cir. 1973).

The appellants rely principally upon Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964) for reversal upon the point presented. In that case, after an indictment had been returned charging Massiah and another man, the government concealed a radio transmitter in a place where the codefendants met. The codefendant who was cooperating with the government elicited incriminating statements from Massiah. This was done after Massiah was arrested, employed an attorney, was arraigned and pleaded not guilty. The Massiah opinion recognized the right of the government to continue its investigation after an indictment. It forbade the use of trickery to obtain incriminating statements after arrest and the retention of counsel. We hold that the holding in Massiah is not applicable to the recording of a meeting

held before arrest where, as here, the meeting had already been arranged prior to the filing of an information.

Appellants' second point is applicable to all the defendants. It urges that the court committed reversible error in allowing the use at the trial of a transcript of the recordings. The transcript was offered but not admitted into evidence. It was not submitted to the jury but it was used by one of the officers as he made voice identifications upon the recordings. It is appellants' position that the court in actuality permitted the officer to read verbatim to the jury from the transcript which was not in evidence.

The question presented fundamentally is one of the application of the best evidence rule. The tapes were admitted as the best evidence. The transcript was what someone else said the tapes contained.

The single authority cited by appellants for their position is United States v. Schanerman, 150 F.2d 941 (3rd Cir. 1945). This case stands only for the rule that even though tapes are of poor quality, they may be admissible if audible in part but that a transcription from the tapes is not.

Our reading of the record does not support appellants' position. We think that the transcript was properly used under the court's close supervision and that no error has been shown. Sims v. State, Fla.App. 1966, 184 So.2d 217. See Volusia County Bank v. Bigelow, 45 Fla. 638, 33 So. 704 (1903).

Appellants' third point urges error upon the failure of the court to provide for a preliminary hearing after the information was filed. This point has been decided contrary to appellants' position. State ex rel. Hardy v. Blount, Fla. 1972, 261 So.2d 172. In addition, appellants' only claim of prejudice is that their applications for bail were rendered less effective.

The fourth point claims various errors in the admission of statements of one or more of the co-conspirators. The question presented in each case is whether the court erred in applying the "co-conspirator rule." See Honchell v. State, Fla. 1971, 257 So.2d 889, and authorities therein cited. The point is presented with subsections and attacks the admission of many portions of the testimony. It is not necessary to set forth the testimony sought to be excluded. We think that it is sufficient to state that we have examined the portion objected to in each instance and we find that no reversible error appears. The evidence was sufficient to find that each of the appellants was a co-conspirator.

The fifth point claims that the testifying officer made the voice identification from the transcript of the tape and not from the tape. The record does not support appellants' claim. As the tapes were played, as each person spoke initially, the tape was stopped so that the witness could identify the new voice.

We pass the sixth point for later discussion and turn to the seventh point. It claimed that no conspiracy was shown to have existed because the evidence failed to establish an agreement to commit the crime. It is urged that the planners had not completed their arrangements

and therefore an agreement had not been reached. The position is not tenable upon this record. In State v. Smith, Fla. 1970, 240 So.2d 807, 810-11, the Supreme Court of Florida in discussing the sufficiency of an information charging that the defendant and others conspired to commit first degree murder, pointed out:

> ******
>
> "In charging a conspiracy to commit murder in the first degree, it is unnecessary to allege the manner or means by which the death of the victim is to be effected, for the crime of conspiracy may be committed prior to the time that the manner or means of effecting the death is determined by the conspirators. In other words, two or more persons could unlawfully combine, conspire, agree, or confederate with each other to commit murder in the first degree (thereby committing the crime of conspiracy) with the understanding that the means of accomplishing the unlawful homicide would be determined at a later date."
>
> ******

This record contains clear evidence that the defendants agreed to commit the crime of robbery. State of mind is not subject to direct proof but may be inferred from all the circumstances proved. Edwards v. State, Fla.App. 1968, 213 So.2d 274.

We have reserved for final consideration appellants' sixth point because the State has confessed error in the sentencing. Appellants' point urges that the verdicts were improper because the defendants were found guilty of two facets of the same crime, to wit: (1) conspiracy to

commit robbery and (2) conspiracy to commit grand larceny. The charge of the court was correct in informing the jury that they might find the defendants guilty of the lesser included offense. See State v. Smith, supra, 240 So.2d 807, at 809. But as conceded by the State, where it is obvious that the two convictions are but separate facets of the same transactions, only one sentence should be imposed, and that for the highest offense charged and proved. Torres v. State, Fla.App. 1972, 262 So.2d 458; Davis v. State, Fla. App. 1973, 277 So.2d 300.

Accordingly, the judgments are affirmed, the sentence of each defendant for conspiracy to commit grand larceny is reversed and all other sentences are affirmed.

Affirmed.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

OCT 19 19
MICHAEL RODAK, JR.

NO. 73-2004

ISAAC WASHINGTON,
PASQUALE SOLE,
and
PETER RINALDI,

Petitioners,

vs.

THE STATE OF FLORIDA,

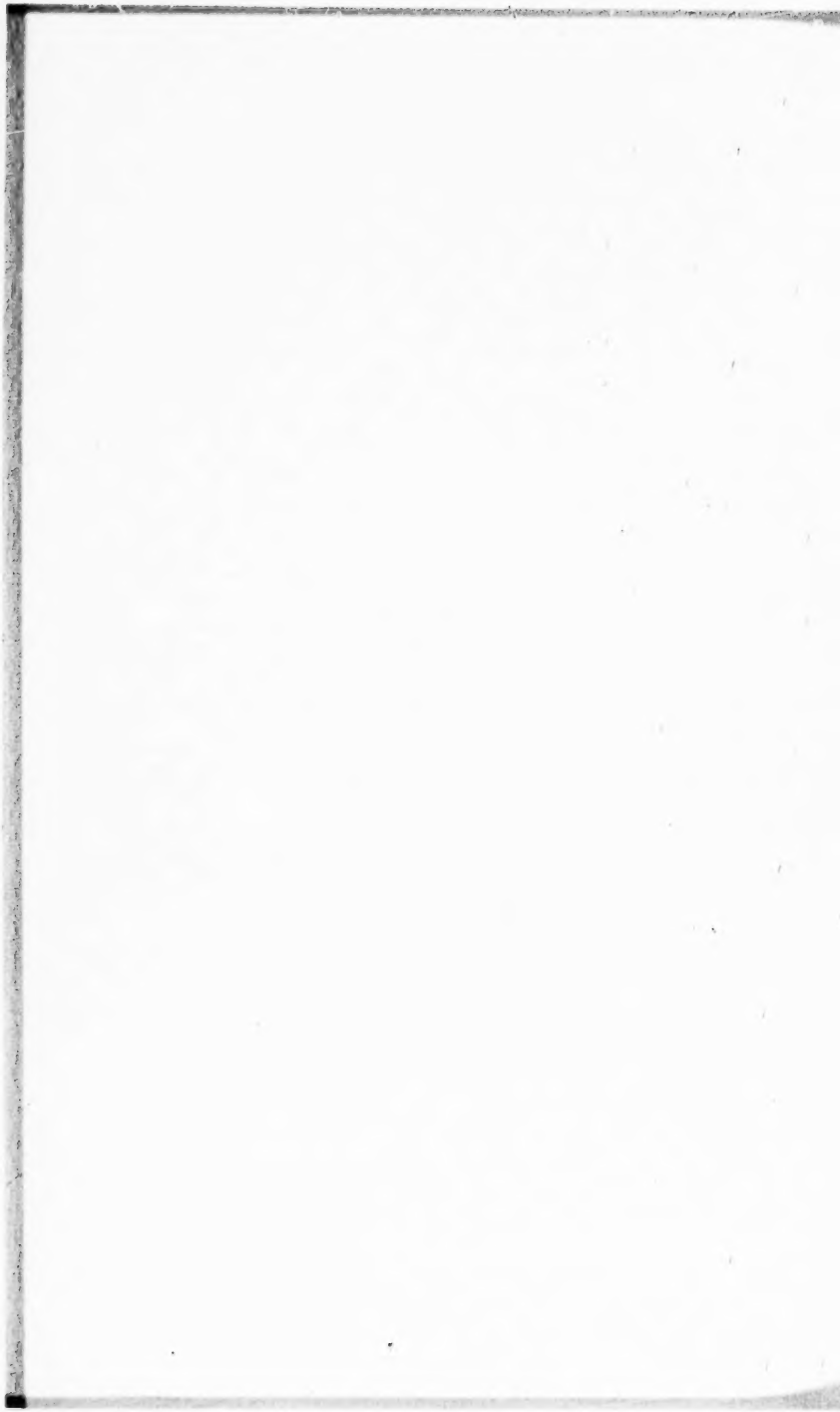
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION AND APPENDIX

ROBERT L. SHEVIN
Attorney General
State of Florida

LINDA COLLINS HERTZ
Assistant Attorney General
Sunset Executive Center
8585 Sunset Drive (Suite 75)
Miami, Florida 33143
(305) 279-8700



INDEX

	PAGE
OPINION BELOW.....	1
JURISDICTION.....	1-4
QUESTION PRESENTED.....	4
ARGUMENT.....	4-8
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	8-9

TABLE OF AUTHORITIES

CASES

Andrews v. Virginia Ry. Co., 248 U.S. 272 (1919).....	3
Banks v. California, 395 U.S. 709 (1969).....	3
Hoffa v. United States, 385 U.S. 293 (1966).....	5
Massiah v. United States, 377 U.S. 201 (1964).....	4, 5, 6
Milton v. Wainwright, 407 U.S. 371 (1972).....	6
Miranda v. Arizona, 384 U.S. 436 (1966).....	4, 5

TABLE OF AUTHORITIES CONTINUED

CASES	PAGE
Rice v. Sioux City Cemetery, 349 U.S. 70, 74 (1955).....	6, 7
Street v. New York, 394 U.S. 576 (1969).....	4

OTHER AUTHORITIES

28 U.S.C. § 1257.....	4, 7
United States Supreme Court Rule 19.....	6
United States Supreme Court Rule 23.....	7

OPINION BELOW

The opinion of the District Court of Appeal, Third District of Florida, is reported at 294 So.2d 407 (Fla. 3d D.C.A. 1974), and appears at Appendix 1-9, to the petition for writ of certiorari.

JURISDICTION

Petitioners invoke the jurisdiction of this Honorable Court under 28 U.S.C. § 1257, which provides, in part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court. . . . [Emphasis supplied]

Petitioners have not secured a decision rendered by the highest court of the State of Florida in which a decision could be had.

The convictions were affirmed on appeal by the court below on April 30, 1974. Thereafter, petitioners petitioned the Florida Supreme Court for writ of certiorari. In addition, petitioners Washington and Rinaldi filed motions in the Florida Supreme Court for stays of proceedings. These pleadings were received by the Clerk of the Florida Supreme Court on May 31, 1974. Appendix 1.

On June 3, 1974, the Florida Supreme Court dismissed the petition sua sponte, upon a finding that it was not timely filed under

Florida Appellate Rules. Appendix 2-3. On June 18, 1974, petitioners filed a motion to reinstate the petition. Appendix 4.

Petitioners filed an application to stay execution of the sentences with THE HONORABLE LEWIS F. POWELL, JR., Circuit Justice for the Fifth Circuit, who denied the application on July 5, 1974, after response in opposition was filed by undersigned counsel, Application No. A-1219. Appendix 5. In addition, petitioner Washington's application to Mr. Justice Powell for supersedeas bond was denied on July 11, 1974, Application No. A-1292. Appendix 6.

During the intervening time, petitioner's original co-defendants, and co-appellants in the court below, William Scaldeferri and Phillip Pompeo, followed different procedural avenues.

Following the April 30, 1974 decision by the court below, the two latter-named co-appellants filed a petition for rehearing in that court on May 10, 1974. Such petition was denied on June 5, 1974 and the mandate of that court issued. Appendix 7.

Co-appellants then petitioned the Florida Supreme Court for writ of certiorari to the court below. Appendix 8. Briefs by both sides have been filed. Appendix 9. The consolidated cases of the two co-appellants in the court below are still awaiting decision by the Florida Supreme Court. Appendix 10.

Petitioners herein have filed various other petitions and motions for stays of execution, etc., in both the Florida Supreme Court and in the court below. The motion of note to this action was a motion to stay

execution of the mandate, filed in the Florida Supreme Court on July 8, 1974. Appendix 11-13. That motion was granted, and the Florida Supreme Court stayed all proceedings in the lower courts "pending disposition of the Petition for Writ of Certiorari. . . ." Appendix 14.

In these circumstances, there has been no final judgment rendered by the Florida Supreme Court on petitioners' motion to reinstate the petition. Even though the power of the Florida Supreme Court to re-open the petition for certiorari is discretionary, until the petition has been finally acted upon by the courts of the State of Florida, no jurisdiction lies in this Court to review the judgment and conviction. Andrews v. Virginia Ry. Co., 248 U.S. 272 (1919).

Further, in Banks v. California, 395 U.S. 709 (1969), this Court held:

> Petitioner did not ask the Supreme Court of California to review the judgment entered by the Court of Appeal in this case. Therefore, the decision of the Court of Appeal is not a "[f]inal judgment * * * rendered by the highest court of a State in which a decision could be had * * *." 28 U.S.C. § 1257, and we lack jurisdiction to review it. The writ of certiorari is dismissed for want of jurisdiction.

Therefore, petitioners having failed to file a timely petition, they have not secured a decision rendered by the highest court of the State of Florida.

Moreover, where the highest state court has failed to pass upon a federal question, it can be assumed that the omission was due to the petitioners' failure to properly present such question to the state courts, unless petitioners can affirmatively demonstrate to the contrary. Street v. New York, 394 U.S. 576 (1969).

Under the circumstances of these proceedings, jurisdiction under 28 U.S.C. § 1257 has not been demonstrated.

QUESTION PRESENTED

Respondent respectfully rephrases the petitioners "Question Presented" as follows:

WHETHER A SUBSTANTIAL FEDERAL QUESTION HAS BEEN DEMONSTRATED?

ARGUMENT

Petitioners invoke both the Fifth and Sixth Amendments in support of their assertion that their constitutional rights have been violated. However, in the court below, the petitioners relied principally upon Massiah v. United States, 377 U.S. 201 (1964), in support of their contention for reversal. Only inferentially, in the reply brief, was Miranda v. Arizona, 384 U.S. 436 (1966) mentioned; and then it was only with regard to petitioner Rinaldi's position on the issue. Clearly, the decision of the court below was predicated on the question of the application of the Massiah decision to the facts presented. Thus, only the Sixth Amendment issue was raised and decided.

It should be noted that, the opinion below clearly states that the Massiah issue was not applicable to petitioner Rinaldi:

> The first point urges that the trial court erred in admitting into evidence testimony and tape recordings of conversations of the defendants with the undercover police officers which occurred subsequent to the filing of the information. This point is applicable to Washington, Sole, Pompeo, and Scaldeferri. (Emphasis supplied).
>
> (Petitioners' App. 5).

By excluding Rinaldi from consideration on the issue, it is evident that the appellate court found that, since petitioner Rinaldi had not been present at the February 25, 1973 meeting, had not been named or described in the information, and had no capias warrant issued against him, he had no standing to complain of a Massiah violation. In addition, since no arrest had been effectuated, petitioner Rinaldi also could not show custodial interrogation in order to demonstrate violation of Miranda, supra. However, this Court's decision in Hoffa v. United States, 385 U.S. 293 (1966), was directly applicable. Petitioner Rinaldi had no constitutional right to be arrested.

The appellate court below also found that, although petitioner Washington had standing with regard to the Massiah issue, Washington had not demonstrated harmful error, because clear and convincing evidence sufficient for conviction was otherwise presented, even without the use of the taped conversations. (See Petitioners' App. 5). This Court has previously held that, assuming the existence of a violation of Massiah, the harmless error

rule could apply. Milton v. Wainwright, 407 U.S. 371 (1972).

It is therefore clear that the decision petitioners seek to question applies only to petitioner Sole with regard to the issue of whether, factually, a violation of Massiah occurred. The decision held that, under all the facts that existed, Massiah was not applicable.

Rule 19(1) of the Supreme Court Rules states that certiorari will be granted only "where there are special and important reasons therefor." Even though the question presented by the petitioners is a federal question, it is not of such substance as to warrant review by this Honorable Court.

In discussing what is meant by a substantial federal question, this Honorable Court stated in Rice v. Sioux City Cemetery, 349 U.S. 70, 74 (1955):

> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. (Magnum Import Co. v. Coty, 262 U.S. 159, 163, 67 L.Ed. 922, 924, 43 S.Ct. 531; see also Address of Mr. Chief Justice Vinson, before the American Law Institute, May 10, 1934, XI Proc Am Law Inst 313.)

> "Special and important reasons" imply a reach to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion. Cf. the classic rules for such avoidance stated by Mr. Justice Brandeis in Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 341, 80 L.Ed. 688, 707, 56 S.Ct. 466.

It is obvious that the instant case presents merely an episode or academic reason for review. This Court's limited reviewing power should not be utilized to supervise the adherence to its previous rulings on a factual, case-by case basis.

In view of the totality of the circumstances in the instant case, it is clear that the issues presented are of a factual nature, important only to petitioner Sole, and do not warrant review by the Supreme Court of the United States.

Petitioners have failed to adequately present in their appendix the complete history of the case subsequent to the date the decision sought to be reviewed was rendered. Such failure is in itself sufficient reason for denying the petition under Rule 23(1)(f) and (j), and (4) of the Supreme Court Rules.

Petitioners have prematurely petitioned this Court, since the Florida Supreme Court has not rendered a final decision in the case. The requirements of 28 U.S.C. § 1257

have not been met. Therefore, jurisdiction has not been demonstrated.

CONCLUSION

Petitioners Rinaldi and Washington have not demonstrated that a substantial federal question exists with regard to the application of the decision below to them. Moreover, even though a federal question has been presented, with regard to petitioner Sole, it is unsubstantial. Therefore, this Court should deny jurisdiction.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General
State of Florida

LINDA COLLINS HERTZ
Assistant Attorney General
Sunset Executive Center
8585 Sunset Drive (Suite 75)
Miami, Florida 33143
(305) 279-8700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the Brief of Respondent in Opposition was served upon JAMES J. HOGAN, Esq., COHEN AND HOGAN, P.A., Attorneys for Washington, 420 Lincoln Road, Miami Beach, Florida, 33139, MELVYN

KESSLER, Esq., Attorney for Sole, 1531 N. W. 15 Street Road, Miami, Florida, 33125, and ARTHUR TIFFORD, Esq., Attorney for Rinaldi, 1922 One Biscayne Tower, Miami, Florida, 33131, this ____ day of October, 1974.

LINDA COLLINS HERTZ
Assistant Attorney General
Sunset Executive Center
8585 Sunset Drive (Suite 75)
Miami, Florida 33143
(305) 279-8700

APPENDIX

TABLE OF CONTENTS

	PAGE
Clerk's Notice of Pleadings Received....	1
Order of Dismissal in the Supreme Court of Florida.....	2
Exerpts of Florida Appellate Rules.....	3
Mailgram Requesting Reinstatement of Petition.....	4
Denial of Application for Stay, Case No. A-1219.....	5
Denial of Application of Bail, Case No. A-1292.....	6
Petition for Rehearing Denied in the 3rd D.C.A.....	7
Petition for Writ of Certiorari to the Florida Supreme Court.....	8
Briefs Filed in the Supreme Court of Florida.....	9
Order Granting Consolidation of Co-Appellants' Petitions in the Supreme Court of Florida.....	10
Motion to Stay Execution of Mandate in the Supreme Court of Florida.....	11-13
Order Granting Motion to Stay Execution of Mandate in the Supreme Court of Florida.....	14

Appendix 1

SID J. WHITE, CLERK
SUPREME COURT OF FLORIDA
Supreme Court Building
Tallahassee 32304

Honorable James J. Hogan
420 Lincoln Road
Miami Beach, Florida

June 3, 1974

Re: Isaac Washington, et al. vs. State of Florida

Case No. 45,618

Dear Sir:

I have this date received the below-listed pleadings or documents:

Received 5/31/74

1. Petition for Writ of Certiorari
2. Petitioners' Brief and One Copy
3. Copies of Record
4. $25 Filing Fee (Receipt enclosed)
5. Motion for Stay of Proceedings
6. Motion to Consolidate Petition for Writ of Certiorari

Please make reference to the case number in all correspondence and pleadings.

Most cordially,

Clerk, Supreme Court

SJW:dc
cc: Hon. William P. Carter, Clerk
Hon. Melvyn Kessler
Hon. Robert L. Shevin
Hon. Arthur W. Tifford

Appendix 2

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1974

MONDAY, JUNE 3, 1974

ISAAC WASHINGTON, ET AL,	**	CASE NO. 45,618
Petitioners,	**	DISTRICT COURT OF APPEAL, THIRD
vs.	**	DISTRICT
STATE OF FLORIDA,	**	73-805
		73-644
Respondent.	**	73-643

It appearing to the Court that the petition for writ of certiorari was not timely filed, it is ordered that the petition is hereby dismissed sua sponte, subject to reinstatement if timeliness is established on proper motion filed within fifteen days from the date of this order.

A True Copy

TEST:

SID J. WHITE
Clerk Supreme Court.

cc: Hon. William P. Carter, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Arthur E. Huttoe, Judge
Hon. James J. Hogan
Hon. Melvyn Kessler
Hon. Robert L. Shevin
Hon. Arthur W. Tifford

Appendix 3

EXERPTS OF FLORIDA APPELLATE RULES

Rule 3.14. Rehearing

a. Time For. Unless further time is allowed, rehearings must be applied for by petition in writing within 15 days after the filing of the decision or order of the Court.

. . .

Rule 3.15. Mandate

a. Issuance of Mandate. Unless the Court, by special order, shall otherwise direct, the clerk, upon the expiration of 15 days from the decision or order, shall issue such mandate or process as may be directed by the Court. . . .

. . .

Rule 4.5. Extraordinary Writs. . .

c. Certiorari.

. . .

(6) From District Court to Supreme Court.

. . . .

The petition for certiorari under this rule shall be filed in the Supreme Court within 30 days from the rendition of the order, decision or judgment of the district court of appeal. The petition shall set forth briefly and clearly the grounds for invoking jurisdiction of the Supreme Court and the facts relied upon for the issuance of the writ. Unless the district court shall otherwise direct for good cause shown after notice and hearing a petition for certiorari filed in the Supreme Court within 15 days from the date of the filing of the

order, decision or judgment sought to be reviewed or within 15 days from the date of the disposition of a petition for rehearing shall automatically stay further proceedings in the district court and the trial court until the disposition of said petition by the Supreme Court; otherwise such petition for certiorari shall operate as a stay of such proceeding only upon the order of the Supreme Court or the Chief Justice after due notice to the adverse party.

Appendix 4

MGMMIAD MIA United States Postal
2-027317E169 06/18/74 Service U.S.Mail
ICS IPMBNGZ CSP WESTERN UNION MAILGRAM
3053710630 MGM TDBN MIAMI FL 145 06-18 0312P EDT
ZIP 33125

ATTORNEY GENERAL
1350 NW 12 AVE
MIAMI FL 33125

IN RE: ISAAC WASHINGTON, PASQUALE SOLE, PETER RINALDI, PETITIONERS
VS.
STATE OF FLORIDA
CASE NUMBER 45,618 DISTRICT COURT OF APPEAL THIRD DISTRICT, 73-805, 73-644, 73-643 MOTION FOR REINSTATEMENT OF JOINT PETITION FOR CERTIORARI
THE ABOVE PETITIONERS HEREBY MOVE THE COURT TO REINSTATE THE PETITION FOR CERTIORARI HERETOFOR FILED ON MAY 31, 1974. AS GROUNDS THEREFOR PETITIONERS AVER THE PETITION FOR WRIT OF CERTIORARI, ALL SUPPORTING PAPERS, FILING FEE, MOTION FOR STAY AND MOTION TO CONSOLIDATE LEFT MIAMI, FLORIDA IN TIME FOR TIMELY FILING WITH THIS HONORABLE COURT. THE DELAY PROMPTING THE FILING AT APPROXIMATELY 920AM, MAY 31, 1974 SHOULD NOT INURE TO THE DETRIMENT OF PETITIONERS BY DENYING THEM THE COURTS CONSIDERATION OF THE PETITION ON ITS MERITS.
RESPECTFULLY SUBMITTED JAMES J HOGAN 420 LINCOLN RD MIAMI BEACH FL
MELVIN KESSLER 1531 NW 15 ST RD MIAMI FL
ARTHUR TIFFORD 200 SE 1 ST MIAMI, FL BY:
ARTHUR W TIFFORD COPY TO ATTORNEY GENERAL
1350 NW 12 AVE MIAMI FL 33125

1515 EDT
MGMMIAD MIA

Appendix 5

COPY

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

July 5, 1974

Arthur W. Tifford, Esquire
CAGNEY & TIFFORD, P.A.
200 S. E. First Street, #800
Miami, Florida 33131

RE: ISAAC WASHINGTON, PETER RINALDI AND PASQUALE SOLE V. FLORIDA, No. A-1219

Dear Mr. Tifford:

Your application for stay in the above-entitled case was presented to Mr. Justice Powell, who has endorsed thereon the following:

"Denied

July 5, 1974

L.F.P., Jr."

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

Francis J. Lorson
Deputy Clerk

FJL:ljj

cc: Ms. Linda C. Hertz
Assistant Attorney General
State Office Building (530)
1350 N.W. 12 Avenue
Miami, Florida 33136

Appendix 6

COPY

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

July 12, 1974

James J. Hogan, Esq.
420 Lincoln Road
Miami Beach, Florida

RE: ISAAC WASHINGTON v. FLORIDA
A-1292

Dear Mr. Hogan:

Your application for bail in the above-entitled cause was presented to Mr. Justice Powell, and it was denied by him on July 11, 1974 with the following endorsement thereon:

"Denied.
7/11/74.
L.F.P.Jr."

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

Francis J. Lorson
Deputy Clerk

jmh

cc: Attorney General of Florida

Appendix 7

IN THE DISTRICT COURT OF
APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1974

WEDNESDAY, JUNE 5, 1974

JOSEPH POMPEO and WILLIAM BERNARD SCALDEFERRI, **

Appellants, **

vs. CASE NOS. 73-621
73-622

STATE OF FLORIDA, **

Appellee. **

Counsel for appellants having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

Clerk District Court of
Appeal, Third District

cc: Milton E. Grusmark
Linda C. Hertz

/h

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA)

Appendix 8

SID J. WHITE, Clerk
SUPREME COURT OF FLORIDA
Supreme Court Building
Tallahassee 32304

Honorable Milton E. Grusmark
1720 79th Street Causeway, Suite 110
Miami Beach, Florida 33141

June 20, 1974

RE: Pompeo vs. State of Florida
Case No. 45,739

Dear Sir:

I have this date received the below-listed pleadings or documents:

Received 6/20/74

1. Petition for Writ of Certiorari

2. Petitioner's motion for extension of time is hereby granted and petitioners are allowed to and including July 5, 1974 to file their brief record. No further extensions of time will be allowed to petitioners.

Please make reference to the case number in all correspondence and pleadings.

Most cordially,

Clerk, Supreme Court

SJW/sls
cc: Hon. William P. Carter, Clerk
Hon. Robert L. Shevin

Appendix 9

STYLE: POMPEO, SCALDEFERRI VS. STATE OF FLORIDA

CASE NO: 45,738 & 45,739 DATE July 19, 1974

RECEIPT IS ACKNOWLEDGED OF:

[ ] CONFORMED COPIES OF RECORD
[X] BRIEF
[ ] CONFORMED TRANSCRIPT
[ ] REQUEST FOR ORAL ARGUMENT
[ ] PETITION FOR ATTORNEY'S FEES
[ ] PETITION FOR REHEARING
[ ] ORIGINAL RECORD/EXHIBITS
[ ] PETITION FOR WRIT OF HABEAS CORPUS/MANDAMUS
[ ] ORIGINAL WRIT WITH ACCEPTANCE OF SERVICE THEREON

LETTER OF _____

RESPONSE TO _____

COPY OF _____

_____

SID J. WHITE, Clerk
Supreme Court of Florida

SID J. WHITE
CLERK, SUPREME COURT OF FLORIDA
SUPREME COURT BUILDING
Tallahassee, Florida 32304

Hon. Linda C. Hertz
Assistant Attorney General
The Capitol
Tallahassee, Florida 32304

Appendix 10

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1974

WEDNESDAY, JULY 10, 1974

PHILLIP J. POMPEO, *
*
Petitioner, *
*
vs. * CASE NO. 45,739
*
STATE OF FLORIDA *
*
Respondent. *
*
****
*
WILLIAM B. SCALDEFERRI, *
*
Petitioner, *
*
vs. * CASE NO. 45,738
*
STATE OF FLORIDA, *
*
Respondent. *
*
****

Petitioner's, Phillip J. Pompeo, motion to consolidate in the above-styled causes is hereby granted.

A True Copy

TEST:

cc: Hon. Milton E. Grusmark
Hon. Robert L. Shevin

SID J. WHITE
Clerk Supreme Court

Appendix 11

IN THE SUPREME COURT OF FLORIDA

NO._____

IN RE:)

PETER RINALDI,) MOTION TO STAY EXECUTION OF MANDATE.

Petitioner,)

COMES NOW the below signed movant, PETER RINALDI, by and through his undersigned attorney, and moves this Honorable Court for an Order staying the execution of the mandat (sic) of the Third District Court of Appeal in Case No. 73-643, and as grounds therefor the movant would show as follows:

1. That on the 17th day of May, 1973, he was convicted in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, of conspiracy to commit robbery.

2. Subsequent thereto the movant appealed to the Third District Court of Appeals, raising numerous issues.

3. The Third District Court of Appeals affirmed the judgment and sentence of the movant. Subsequent thereto a Petition for Writ of Certiorari was filed with the Supreme Court of Florida.

4. The Supreme Court of Florida dismissed the Petition for Writ of Certiorari. A Petition for rehearing was thereafter filed with this Honorable Court and has not been ruled on as of the filing of this motion.

5. In the event said Petition for rehearing is denied a Petition for Certiorari will be filed with the Supreme Court of the United States on or before July 8, 1974.

Continued

6. The Petition for Writ of Certiorari to the Supreme Court of Florida delineated issues different than those that will be filed in the Petition to be filed with the Supreme Court of the United States.

Appendix 12

7. Briefly stated, the issues in the Petition to the Supreme Court of the United States will be as follows:

The question presented involves a surreptitious interrogation of the movant after the filing of an Information, and after the issuance of an arrest warrant, but before the actual arrest itself. The Third District Court of Appeals ruled that the movant was not required to be advised of his constitutional right to counsel and the Fifth Amendment right against self-incrimination until the actual arrest itself. The Petitioner in his Petition for Writ of Certiorari asserts that the decision of the Third District Court of Appeal is in direct conflict with the dictates of Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964).

8. The Petitioner is currently free on supersedeas bond.

9. In addition to the foregoing, the Petitioner was convicted in District Court for the Southern District of Florida of an offense relating out of the same events and occurrences. Petitioner is currently free on supersedeas in that case, an appeal having been taken to the Fifth Circuit Court of Appeals.

WHEREFORE, in light of the fact that the Petitioner has prepared and is in the process of filing a Petition for Writ of Certiorari

Continued

with the Supreme Court of the United States, Petitioner moves this Honorable Court for an order staying the execution of the mandate issued by the District Court of Appeals for the Third District of Florida pending the denial of his Petition for Rehearing or the Supreme Court's acceptance of jurisdiction, or denial of certiorari.

Respectfully submitted,

ARTHUR W. TIFFORD, ESQ.
Attorney for Petitioner, Rinaldi
Suite 1922 One Biscayne Tower
Miami, Florida 33131
Telephone 305-371-1477

Appendix 13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 3rd day of July, 1974 to the Office of the Attorney General for the State of Florida, 1350 N. W. 12 Avenue, Miami, Florida, 33136.

ARTHUR W. TIFFORD, ESQ.

Appendix 14

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1974

MONDAY, JULY 8, 1974

ISAAC WASHINGTON, PASQUALE SOLE and PETER RINALDI,	**	
Petitioners	**	
vs.	**	CASE NO. 45,618
STATE OF FLORIDA,	**	
Respondent.	**	

The motions for stay of proceedings filed on behalf of Isaac Washington and Peter Rinaldi are hereby granted and proceedings in the District Court of Appeal, Third District, and in the trial court, are hereby stayed pending disposition of the Petition for Writ of Certiorari filed in this Court.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

sg
cc: Messrs. Cohen & Hogan
Honorable Arthur W. Tifford
Honorable Melvyn Kessler
Honorable Robert L. Shevin
Honorable William P. Carter, Clerk
Honorable Richard P. Brinker, Clerk